



POLICE DEPARTMENT CITY OF NEW YORK

January 4, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Keith Drummond
Tax Registry No. 940106
75 Precinct
Disciplinary Case No. 2016-15008

Charges and Specifications:

1. Police Officer Keith Drummond, on or about June 8, 2015, August 3, 2015, October 14, 2015, and October 21, 2015, failed to appear in traffic court resulting in the dismissal of six summons cases.
P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
P.G. 211-01 - DUTIES AND CONDUCT IN COURT
2. Police Officer Keith Drummond, on or about July 20, 2015, failed to appear in traffic court resulting in the rescheduling of three summons cases.
P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
P.G. 211-01 - DUTIES AND CONDUCT IN COURT
3. Police Officer Keith Drummond, on or about October 6, 2015, appeared in traffic court unprepared in that he brought with him incorrect paperwork resulting in the dismissal of three summons cases.
P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
P.G. 211-01 - DUTIES AND CONDUCT IN COURT
4. Police Officer Keith Drummond, on or about June 8, 2015, July 20, 2015, August 3, 2015, October 14, 2015, and October 21, 2015, failed to notify his roll call of any conflicts he had with the scheduled dates/times of the hearings and/or failed to request a rescheduling at least ten calendar days before the hearing date.
P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
P.G. 211-10 - COURT AND AGENCY APPEARANCES
5. Police Officer Keith Drummond, assigned to the 75 precinct, on or about July 8, 2016, failed to appear in traffic court resulting in the rescheduling of one summons case. (*As amended*)
P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
P.G. 211-01 - DUTIES AND CONDUCT IN COURT

Appearances:

For the Department: Daniel Maurer, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street – Suite 640
New York, NY 10038

Hearing Date:

December 6, 2016

Decision:

Specification 1 (non-appearance, four dates): Guilty in part
Specification 2 (non-appearance, one date): Not Guilty
Specification 3 (unprepared, one date): Not Guilty
Specification 4 (no rescheduling request, five dates): Guilty in part
Specification 5 (non-appearance, one date): Guilty

Trial Commissioner:

ADCT Jeff S. Adler

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on December 6, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Sergeant Pierre Orion and Lieutenant Kevin McMillan as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find as follows: for Specification 1, I find Respondent guilty of not appearing in traffic court on two of the four days alleged; for Specification 2, I find Respondent not guilty of not appearing in court; for Specification 3, I find Respondent

not guilty of appearing in court unprepared; for Specification 4, I find Respondent guilty of failing to notify roll call regarding conflicts on two of the five dates; and for Specification 5, I find Respondent guilty of not appearing in court.

FINDINGS AND ANALYSIS

Between June 8, 2015 and October 21, 2015, the time period covered by the first four specifications, Respondent was assigned to the Viper 14 Unit of PSA-9. That unit was located in a satellite office in Astoria, Queens, an approximately 20-minute drive from PSA-9. During that time period, Respondent, by his own admission, failed to appear in traffic court on five occasions, resulting in multiple summonses either being dismissed or rescheduled. On a separate date, Respondent appeared in traffic court with the incorrect paperwork for the cases actually on the court calendar that day. Additionally, on July 8, 2016, after Respondent had been transferred back to the 75 Precinct, he again failed to appear in traffic court, resulting in the rescheduling of a summons. At issue is whether Respondent's failure to appear in court on these dates constituted misconduct.

Sergeant Pierre Orion, an investigator with the Housing Bureau, testified that for each of the court dates covered by the first four specifications, he investigated whether Respondent was notified to appear, whether he did appear, and how the cases were affected. Toward that end, he retrieved documents from Brooklyn North Traffic Court and the PSA-9 roll call office, and spoke with a person from roll call. He also interviewed Respondent on January 6, 2016. (Tr. 10, 12)

According to Sergeant Orion's investigation, Respondent failed to appear in traffic court in 2015 on June 8, July 20, August 3, October 14, and October 21. As a result, one summons was dismissed on June 8, two were dismissed on August 3, another one was dismissed on October 14, and two more were dismissed on October 21. For the July 20 non-appearance, three summons cases were rescheduled. Also, on October 6, Respondent appeared with the wrong notes, and three cases were dismissed. The sergeant did not produce as evidence any notification documents bearing Respondent's signature, and was unaware of any logs being maintained that showed when notifications actually came in. However, during his Department interview, Respondent acknowledged that he had been notified to appear on each of the specified dates. Sergeant Orion also testified that according to roll call, Respondent had not notified them that he had a conflict with any of the scheduled court dates. (Tr. 12, 15-17, 21, 24, 35)

Lieutenant Kevin McMillan of Brooklyn North Investigations testified that he investigated Respondent's scheduled traffic court appearance of July 8, 2016, referred to in Specification 5. The lieutenant obtained a copy of the court notification from Respondent's parent command, signed by Respondent. He also checked with the court system to see if Respondent had appeared. When he learned that Respondent had not appeared in traffic court on that date, the lieutenant checked with Respondent on August 23 to ask if he had a valid explanation. According to the lieutenant, Respondent confirmed that he had received the notification, and that he had not appeared in traffic court. On the date he was supposed to be in court, Respondent was assigned to drive his platoon commander. (Tr. 38-40, 45-46) Lieutenant McMillan could not recall what

happened to the one summons that was on the calendar that date, but the parties stipulated from the paperwork that the summons was rescheduled for a new date. (Tr. 85)

Respondent testified that the Viper 14 command to which he was assigned during 2015 was a small subunit of PSA-9, with no dedicated roll call on-site. There was one supervisor, and about two or three other officers assigned to his platoon. Respondent worked the first platoon, which was a midnight tour. Whereas court notifications at his former precinct, the 75, typically came three-to-four weeks in advance of the court date, at the Viper 14 office it was a "good week" if they were notified three days in advance. The notifications would then be pinned to a bulletin board in a small 8x8 room. It was, according to Respondent, "a very horrible organization," just a fax machine and a bulletin board. (Tr. 52-54, 63, 79)

Respondent explained that he did not appear for the June 8, 2015 traffic court date because he was on vacation from June 1 - June 9. Also, he already was on vacation when the notification came through, and so he wasn't even aware of the court date until after he returned from vacation. Respondent added that although he had made that vacation pick while still at the 75 Precinct, the PAA at his new command had informed him that there was no problem with his keeping those days. (Tr. 56-58, 78)

Regarding the July 20 court date, Respondent testified that he realized he was RDO for that day, and asked his supervisor, Lieutenant Popola, what he should do. The lieutenant told him to check with the Integrity Control Officer ("ICO"), which he did. The ICO informed Respondent, who was modified at the time, that he would not be authorized for overtime, so he did not appear in traffic court that day. Similarly, Respondent was RDO for the August 3 court date. Again he checked with Lieutenant

Popola, who asked Respondent what the ICO had told him last time. Respondent answered that the ICO had said he would not be authorized for overtime, so Lieutenant Popola told him not to go to traffic court. Respondent testified that he understood that missing traffic court was "a big deal," but he also believed that "if my immediate supervisor tells me I cannot go and I am not allowed to accumulate overtime, I have to listen to a lawful order of a supervisor." (Tr. 58-59, 63, 69-73, 76-77)

Respondent, who issued close to 200 summonses in the year before being transferred to the Viper Unit, explained why he appeared in traffic court with the incorrect paperwork on October 6. According to Respondent, he took the notification and went to the 75 Precinct to retrieve the appropriate summonses from his locker. When he was called to testify in court, he discovered that the documents he had brought were for different cases than the three calendared for that day. Respondent testified that the mistake was in the notification he received, and insisted that the paperwork he brought matched the notification that was given to him by the Department. (Tr. 59-61, 74-76, 81-82) The Department Advocate introduced into evidence the DMV Police Appearance Listing for that day, as well as Respondent's time slip showing that he appeared. (Dept. Ex. 1)

Respondent was unsure why he missed the October 14 traffic court appearance. He testified that there was one occasion where he was notified at 2330 hours about a tour change for traffic court the next day. However, since he already had come in to work and had no one to watch his three young children, he failed to appear at traffic court. Respondent, though, was unsure whether the day he was describing corresponded with the October 14 traffic court date. (Tr. 61-62)

Regarding his failure to appear in traffic court on October 21, Respondent testified that he again was on vacation for that date. This time, though, the notification may have come before he left for vacation. Respondent believed that he wrote "vacation" on the notification and faxed it to his roll call, and did not hear back. According to Respondent, from his experience at the 75 Precinct that was all he needed to do, and roll call would take care of it themselves. (Tr. 62, 78-79)

Respondent offered no excuse for missing traffic court on July 8, 2016, admitting that until he received a call from the ICO the next day he had not even realized that he had missed his court appearance. (Tr. 64)

Section 211-10 (11) of the Patrol Guide provides that an officer who receives a notification for traffic court must "immediately notify roll call personnel of any conflicts with the scheduled date/time of hearing." Otherwise, an officer is required to appear with appropriate paperwork for each summons being adjudicated. See also Patrol Guide section 211-01.

In his closing remarks, the Department Advocate suggested a rather straightforward framework for assessing these charges: Respondent acknowledged that he received notifications for each of the hearing dates, and admitted that he either did not appear or brought the incorrect paperwork, and therefore he should be found guilty. However, since Respondent provided different explanations for the various dates in question, some more compelling than others, it is necessary to evaluate the circumstances surrounding each of the scheduled appearances individually in order to determine whether Respondent's behavior rises to the level of misconduct.

Witnesses for both sides described the Viper-14 base as a subunit of the PSA-9 parent command, located about 20 minutes away. The Viper-14 unit was a small one, staffed by approximately four officers, most on restricted or modified duty, and one supervisor. Roll call was located in the PSA-9 building, and operated only between 0800 and 1630 hours. Notifications to the Viper officers were made by posting them on a bulletin board in a small, 8x8 room at the Viper base, though apparently there was no standardized procedure for how and when notifications were faxed there from the PSA-9 office. Respondent testified, without contradiction, that these notifications often came a day or two before the court date, in contrast to other precincts where they would arrive three-or-four weeks in advance. It is in this context that we now consider each of the specifications.

Specification 1 charges Respondent with failure to appear on four separate dates in 2015. Regarding the June 8 non-appearance, this tribunal credits Respondent's explanation that he was on vacation before the notification even came in, and was on vacation for the court date as well. No credible evidence was presented to contradict this assertion. As such, Respondent's failure to appear in traffic court on June 8 did not constitute misconduct, and I find him not guilty of that portion of the specification.

As to the August 3 non-appearance, Respondent explained how he spoke with his immediate supervisor after the ICO previously had told him he would not be approved for overtime. His supervisor instructed Respondent not to go to traffic court that day. Respondent acknowledged the importance of making traffic court appearances, but credibly explained that he felt compelled to follow the order of his supervisor. The Department Advocate argues that no supervisor would give such an order. However,

even if such an order might well be considered ill-advised under the circumstances, no credible evidence was presented to disprove Respondent's contention that the conversation he described did, in fact, occur. I credit Respondent's testimony, and in the absence of credible evidence to the contrary I find Respondent not guilty of the August 3 portion of Specification 1.

Regarding the October 14 date, Respondent suggested that he may have missed that court appearance because the notification was last-minute and conflicted with his child care needs. Putting aside the issue of whether that excuse, if true, would even be valid, Respondent was unable to say with certainty that the events he described actually occurred in connection with the October 14 date as opposed to some other time. In light of this uncertainty, this tribunal is not prepared to accept Respondent's description of events as an excuse to this charge. Since the credible evidence has established that Respondent was notified to appear in traffic court on October 14, and in the absence of credible evidence justifying his non-appearance, I find him guilty of this portion of Specification 1.

This specification also alleges that Respondent failed to appear on October 21. Respondent's explanation was that he was on vacation for this date as well. However, whereas with the June 8 court date the notification didn't arrive until after he was on vacation, here Respondent acknowledged that he may have received the notification before he left for vacation. Respondent testified that he believed he faxed the notification to his roll call, and when he didn't hear back he just went on his vacation as scheduled. This tribunal does not find that excuse to be a valid one. It is reasonable to expect that a person in Respondent's position would at least make some effort to follow up with roll

call to clarify if they received and understood his fax, and to determine whether the court date was being rescheduled. In the absence of any evidence that Respondent followed up on his fax, he is accountable for his failure to appear in traffic court on October 21, and I find him guilty of that portion of Specification 1.

Specification 2 alleges that Respondent failed to appear in traffic court on July 20, 2015. As with the August 3 court date included in the first specification, Respondent was RDO on the day scheduled for this appearance. Respondent explained that his supervisor instructed him to check with the ICO about getting authorized for overtime. The ICO stated that Respondent, who was modified at the time, would not be approved for overtime, and so Respondent did not appear in traffic court. Since he did reach out to the ICO, and followed the direction of his superior office, Respondent's failure to appear at traffic court on that date did not rise to the level of misconduct, and I find him not guilty of Specification 2.

Specification 3 alleges that Respondent appeared with the incorrect paperwork on October 6, 2015. Sergeant Orion testified that he learned from traffic court that Respondent was unprepared, but had no further details from the court as to how precisely he was unprepared. Respondent explained that the documents he retrieved were based on the notification he had received, and if there was a mistake it was in the notification itself. The Department Advocate argues that it is implausible that the notification would be incorrect for three separate summonses issued to three separate motorists. However, in light of Respondent's description of the Viper 14 office, and how notifications weren't delivered with the same efficiency as at a regular command, it is quite plausible that there was a mix-up in the notification provided to Respondent. This was the only occasion

where evidence was presented that Respondent brought the incorrect paperwork, and in the absence of any credible evidence to the contrary, this tribunal is prepared to accept his plausible explanation for why that error occurred. The record has failed to establish, by a preponderance of the credible evidence, that this mistake was due to misconduct by Respondent, and I find him not guilty of Specification 3.

Specification 4 charges Respondent with failing to notify roll call of his scheduling conflicts for the five dates in 2015 where he did not appear in traffic court. The notification requirement of Patrol Guide section 211-10 is designed to give roll call sufficient time to reschedule court dates, ideally at least 10 calendar days in advance of the originally scheduled date. Again, since Respondent had different explanations for the various dates in question, it is necessary to assess the particular dates individually.

For the June 8 court date, as discussed above, Respondent was already on vacation when the notification came through. As such, it would not be reasonable to hold Respondent accountable for failing to notify roll call on that date, and I find him not guilty of that portion of the specification. Respondent also was on vacation for the October 21 court date. However, Respondent apparently did receive that notification before he left for vacation, and claimed he faxed the notification back to his roll call with the word "vacation" written on it. But as discussed above, there was no evidence that Respondent made any effort to follow up in a meaningful way with roll call or anyone else about that court date, and so his attempt at notification was inadequate. Accordingly, I find him guilty of that portion of Specification 4.

On two of the scheduled court dates, July 20 and August 3, Respondent was RDO. As discussed above, Respondent did make efforts to clarify his status for those

dates, calling the ICO and also speaking with his immediate supervisor. When the ICO indicated that Respondent would not be approved for overtime, Respondent's supervisor instructed him not to appear. Under these circumstances, the credible evidence has not established misconduct on the part of Respondent, and I find him not guilty of these portions of Specification 4.

As for the October 14 court date, Respondent was unsure why he did not appear, suggesting that it may have been due to his receiving a last-minute tour change that conflicted with his child care commitments. Again, since Respondent could not reliably attribute that conflict to the particular date in question, this tribunal is not prepared to accept his excuse for failing to notify roll call, and I find him guilty of this portion of Specification 4.

Specification 5 alleges that Respondent failed to appear in traffic court on July 8, 2016. Respondent initially was assigned to drive his platoon commander that day. He candidly admitted that he forgot about his scheduled court appearance. In the absence of any reasonable explanation for his failure to appear in court that day, I find Respondent guilty of Specification 5.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 9, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no formal disciplinary history.


The Department Advocate asks that Respondent forfeit ten (10) vacation days as an appropriate penalty. However, in light of the not guilty findings on several of the charges, that penalty should be slightly reduced. For most of the time period covered by the Specifications, Respondent was assigned to the Viper 14 subunit of PSA-9, located in a satellite office. Respondent has been found guilty of failing to appear on three separate dates, resulting in three dismissals and one rescheduling. He also has been found guilty of failing to make proper notifications on two separate dates. In *Disciplinary Case No. 9686/13* (Dec. 26, 2013), a nine-year officer with no disciplinary history negotiated a penalty of eight (8) vacation days for failing to appear at a TVB hearing resulting in the dismissal of four summonses. Taking into account the totality of facts and issues in this matter, including Respondent's lack of formal disciplinary history, I recommend that Respondent's penalty be the forfeiture of seven (7) vacation days.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

APR 27 2017

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER KEITH DRUMMOND
TAX REGISTRY NO. 940106
DISCIPLINARY CASE NO. 2016-15008

Respondent was appointed to the Department on January 9, 2006. His last three annual performance evaluations were as follows: he received an overall rating of 4.0 "Highly Competent" in 2014, and an overall rating of 3.5 "Highly Competent/Competent" in both 2013 and 2012. He has been awarded five medals for Excellent Police Duty. [REDACTED]

[REDACTED]

Respondent was placed on Modified Duty status from December 23, 2014 to January 31, 2016, the period during which he was assigned to Viper 14.

He has no prior formal disciplinary history.

Jeff S. Adler
Assistant Deputy Commissioner Trials